IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3461 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL BABUBHAI CHITHUBHAI

Versus

JASHBHAI D PATEL

Appearance:

1. Special Civil Application No. 3461 of 1990

NOTICE SERVED for Petitioner No. 1-3

MR MI PATEL for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 05/03/2004

ORAL JUDGEMENT

This petition is filed under Article 226 of the Constitution of India challenging the order passed by the

Deputy Collector, Baroda in CON-case No. 158/84-85 which was confirmed by the Deputy Secretary, Revenue Department (Appeals), State of Gujarat, Ahmedabad in SRD/CON/VADAD/27/88 on 19.03.1990.

2. It is the case of the petitioners that the petitioners are the owners and in possession of the land situated at village Tajpura in Baroda District being Survey No. 353, admeasuring hectre-are 0-29-73, Akar Rs.2.56 which was an irrigated land and whose block No. was 427. The said land was given to the father of the petitioner Nos.1 and 3 Chithubhai by the father of respondent No.1 in the year 1954-55 for cultivation on half crop share basis. On that basis, Chithubhai had cultivated the land upto 6.7.61 and thereafter from 7.7.61, the said land was given on lease for cultivation for five years after obtaining Rs.1400/-. Thereafter on 15.06.1965, father of the respondent No.1 had taken Rs.7,500/- from the father of petitioners Nos.1 and 3 and had sold the said land to Chithubhai. On that basis, the possession of the said land all throughout remained with Chithubhai upto 29.09.1966 i.e. the date on which he expired.

3. Thereafter, between petitioner Nos.1,2 and 3, the property was divided and the land in question has come to the share of the father of petitioner No.2. The father of the petitioner No.2 had expired on 15.11.1987. In the meanwhile, respondent No.2 had initiated proceedings under the provisions of the Fragmentation Act and the said proceedings were concluded without the knowledge of the petitioners and by order dated 20.1.1966, the respondent No.2 declared the land as a fragment under Sec. 7(1) of the Act and imposed a fine of Rs.250/- to the transferor under Sec. 9(2) of the said Act and also ordered eviction of the petitioners under Section 9(3) of the Act.

4. Being aggrieved by the said order, the petitioners preferred revision application No. SRD/CON/VADAD/27/88 before the Deputy Secretary, Revenue Department (Appeals), Ahmedabad who vide his order dated 19.03.1990 rejected the said Revision application and confirmed the order of the Deputy Collector.

5. It is this order which is under challenge in this petition filed under Article 227 of the Constitution of India.

6. This petition was filed through learned advocate who was later on elevated as a Judge of this Court and

hence, fresh notice was issued on the petitioners. Despite the service of fresh notice, nobody has appeared on behalf of petitioners.

7. Mr. J.M. Patel, learned advocate appearing for respondent No.1 has submitted that after the Deputy Collector has passed the order, negotiations were taken place between the parties to the proceedings with a view to arrive at amicable settlement and long time was taken in negotiations. He has further submitted that during the period negotiations were in progress, the respondent has applied for getting the land of Block No.427 entered in his name in the revenue record and also for getting possession of the said land pursuant to the order passed by the Deputy Collector, Baroda. On the basis of the said application, mutation entry No. 973 came to be effected in the name of the respondent and notice under Section 135(D) of the Land Revenue Code was also served on the respondent No.1 as the said land stood in his name at the relevant point of time. After the service of the said notice, the Circle Inspector certified the said mutation entry on 01.10.1988. During the course of inquiry for effecting the mutation entry No. 973, some well-wishers of both the parties have intervened and as a result thereof, settlement was arrived at between the parties on 20.08.1998 whereunder it was agreed that the petitioners would deliver and hand over vacant and peaceful possession to the respondents and in lieu thereof, the respondent would pay the sale consideration of Rs.7,500/- to the petitioners within a period of three months from the date of delivering the possession. Pursuant to the said settlement, the petitioners have handed over the possession of the said land to the respondent on 20.08.1988 as per the agreement and the respondent was required to return back the amount to the petitioners being sale consideration within a period of three months from the date of delivery of the possession. The said agreement was arrived at in the presence of one Ramanbhai Ramdas Patel, who was the owner of land situated on the west of the land in dispute and one Arvind Chootabhai Patel, who was the owner of land situated on the south of the land in question and one Dayabhai Manjibhai Patel, who was the owner of land situated on the east of the land in question and one Ambalal Naranbhai Patel, Sarpanch of the village at the relevant time. All these persons have also filed Affidavits before the Court on 19.07.1990 in support of the respondent.

8. Mr. Patel has further submitted that since the date of handing over the possession of the land in

question by the petitioners, the respondent is in possession of the said land continuously and he has been cultivating the said land personally ever since the possession was handed over to him. Despite the above facts, the petitioners might have second thought and they filed revision application before the Deputy Secretary challenging the order passed by the Deputy Collector and the said revision application was also rejected by the Deputy Secretary.

9. Mr. Patel has further submitted that during the pendency of this petition before this Court, the respondent has filed Civil Application for vacating interim relief granted by this Court exparte. However, during the pendency of this Civil Application, the petitioners executed a writing in favour of the respondent No.1 on 17.06.1992. By the said writing, the petitioners have given right, title and interest in the land in question in favour of the respondent. The petitioners have also accepted the respondent as absolute owner of the said land and have confirmed that the respondent was in exclusive possession and enjoyment of the said land and they have declared that the respondent was entitled to use and enjoy the said land in the manner he liked. Mr. Patel has further submitted that even the present petitioners have made an affidavit on 13.02.2004 stating that they are not interested in pursuing the present matter and they want to withdraw the present petition. Mr. Patel has placed on record the Affidavit duly affirmed by the petitioners.

10. Having regard to the facts and circumstances of the case and having further regard to the fact that there is a concurrent finding of both the authorities below, the Court is not inclined to exercise its extraordinary writ jurisdiction under Article 227 of the Constitution of India by interfering in the matter. Here, on more than one occasion, the settlement was arrived at between the parties and the possession is already with the respondent since many years. Even lastly the Affidavit is also placed on record pointing out that the petitioners are not interested in pursuing this matter. Taking all these aspects into consideration, the Court is of the view that no interference is called for in the matter and hence, the petition is dismissed. Rule discharged. Interim relief granted earlier is vacated. There shall be no order as to costs.

[K.A. PUJ, J.]

#Savariya#

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